THE HON'BLE MR JUSTICE B. PRAKASH RAO

and

THE HON'BLE MR JUSTICE P. LAKSHMANA REDDY

WRIT APPEAL NO : 2181 of 2005

JUDGMENT: (Per Hon'ble Sri Justice P.Lakshmana Reddy)

This appeal is filed against the orders of single Judge dated 14.03.2005 passed in W.P.NO. 4622 of 2005 on the file of this Court.

The relevant facts in brief are as follows:

The respondent herein V.Sreenivasulu, Assistant Engineer in Operation in A.P. Southern Power Distribution Company Limited (for short 'APSPDCL'), Rural Section, Kadapa filed Writ Petition impleading the present appellants viz. the Chairperson & Managing Director, A.P. Transmission Corporation Limited, the Chairperson & Managing Director, APSPDCL, Tirupathi and the Superintending Engineer (Operation Circle), APSPDCL, Kadapa as respondents 1 to 3. The case of the respondent-writ petitioner is that he was selected as Sub-Engineer on 10.08.1992 and he worked in that capacity up to 31.08.1995 an thereafter he was posted as
Sub-Engineer against the post of AE/Assistant Additional Engineer/Maintenance at 132KSS Rayachoti and he joined there and discharged duties of the post of Assistant Additional Engineer (for short 'AAE') till 22.01.2002 and therefore he is entitled for the salary attributable to the post of AAE. He filed an application to the first appellant on20.06.2004 stating that he was directed and posted in the post of AE/AAE Maintenance, 132 KV Sub-Station, Rayachoti and he jointed on 29.09.1996 and since then he was purely

discharging the duties of AAE looking after the entire maintenance of 132 KV SS Rayachoti for a period from 29.09.1996 to 22.01.2002. In that application he quoted a similar case three load surveyors were kept
in-charge in the post of Assistant Engineer like him in Rural Electric Supply Cooperative Society, Rayachoti who performed their duties as AAE requested the management to give monetary benefit in the form of minimum AAE's time scale and as the management did not sanction the same, they approached this Court in W.P.No.2984 of 1996 and obtained interim orders in W.P.M.P.No.3593 of 1996 directing the department to pay minimum scale applicable to the post of AAE and consequent to the directions of this Court, the Managing Director, RESCO Ltd. Rayachoti sanctioned minimum scale of AAE to those persons. He submitted that his case is also similar to their case and therefore he is also entitled for the minimum scale of AAE for the period for which he discharged the duties as AAE.

The writ petitioner also filed another application on 18.10.2004 reiterating his request. But, the Superintending Engineer, APSPDCL, Kadapa issued Memo No. SE/O/KDP/Adm/C1.F.5/D.No.3028, dated 18.12.2004 informing the writ petitioner that he has no chance to claim for the period from 20.09.1996 to 22.01.2002 as he was transferred only as Sub-Engineer/132/KVSS/Maintenance/Rayachoti duly counting against the post of AAE for administrative convenience and that the orders of this Court dated 19.02.1996 in W.P.No.2984 of 1996 are not applicable in his case and that the rules do not permit the payment of salary of AAE to the Sub-Engineer.

Aggrieved by the rejection of his request in the form of the said memo, the respondent-writ petitioner challenged the said memo dated 18.12.2004 in W.P.No.4622 of 2005.

The appellants/respondents contested the claim of the writ petitioner and argued at the admission stage that the writ petitioner was transferred as only Sub-Engineer duly counting against the post of AAE for administrative convenience and the writ petitioner was not

promoted to that post of AAE till 22.01.2002 and hence he is not entitled for the salary of AAE. The writ petitioner contended before the learned single Judge that in pursuance of the proceedings dated 20.09.1996 issued by the Superintending Engineer, A.P.S.E.B., Rayachoti, the writ petitioner was directed to report to duties as Sub-Engineer counted against the post of AAE as per letter dated 20.09.1996 and he worked as AAE till January, 2002 and that since he was posted against the post of AAE, he is entitled for the salary attached to the post of AAE though he was not given any promotion to the post of AAE. He relied on the interim orders of High Court in W.P.No.2984 of 1996, dated 28.02.1997.

The learned single Judge allowed the writ petition at the admission stage on the sole ground that in a similar case in W.P.no.2984 of 1996, dated 28.02.1997 where the writ petitioners discharged the duties of post of AAE, this Court directed the employer to pay minimum scale attached to the post of AAE and therefore the writ petitioner herein also is entitled for the salary attributable to the post of AAE for the period from 20.09.1996 to 22.01.2002 and directed the present appellants to pay the arrears within six months from the date of receipt of copy of the orders.

Aggrieved by the same, the respondents in the writ petition filed the present appeal contending that the learned single Judge failed to note that even according to the writ petitioner he was only designated as Sub-Engineer and he was not promoted as AAE and therefore merely because he discharged the duties of AAE, he is not entitled for the salary attached to the post of AAE as long as the writ petitioner is not promoted to that post. The learned counsel further contended that in the normal course of action for administrative convenience, some times extra burden of work will be placed on the officers and it does not mean that the officers are entitled for the salaries attached to the higher cadre post.

During the course of hearing of the appeal, the learned counsel for the appellants reiterated the contentions raised in the grounds of

appeal. He submitted that the substantive post of respondent-writ petitioner is only Sub-Engineer and that his transfer orders also clearly disclose that he was posted as Sub-Engineer duly counting against the post of AAE as there was vacancy and therefore the learned single Judge grossly erred in allowing the writ petition. He further submitted that the unreported judgment in W.P.No.2984 of 1996 dated 28.02.1997

is not applicable to the facts of this case and even if it is assumed that the said facts of that case are similar to the facts of this case, the law laid down therein is not a good law and it is to be overruled.

On the other hand, the learned counsel for the respondent-petitioner reiterated the contentions raised before the learned single Judge and also in the application filed by the writ petitioner before the appellants-respondents.

The points that arises for determination in this appeal are:

1. Whether the impugned orders of the learned single Judge are sustainable in law?

2. To what result?

POINT NO.1:

It is not disputed that the respondent-writ petitioner was selected only as Sub-Engineer on 10.08.1992 and he was promoted as AAE only on 22.01.2002 and till then his substantive post was only Sub-Engineer. It is not disputed that the writ petitioner was transferred and posted as Sub-Engineer duly counting against the post of AAE at 132-KV Sub-Station, Rayachoti in the proceedings of the Superintending Engineer, A.P. Electricity Board, Kadapa, dated 16.08.1995. The copy of the said proceedings is filed in the material papers submitted along with the appeal memorandum. The said proceedings read as follows:

"Memo NO.SE/O/CDP/Adm/C1/F, D.No.2511/95, dated

16.08.1995.

Sub:- Estt. – APSEB – Engg.Services – Sub-Engineers – Transfers and posting orders – Issued.

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Sri V.Sreenivasulu, Sub-Engineer/Shirt/220 KV SS/Cuddapah is transferred and posted to the 132 KV SS/Rayachoty counted against the existing vacant post of Asst. Engineer/Addl.Asst.Engineer.

He is directed to report for duty to the Asst.Divl.Engineer/Maintenance/Cuddapah at 132 KV SS/Rayachoty.

Further, he is informed that, he is not entitled to claimT.T.A. or jointing time as this order is issued at his request only.

Sd/- G.Venkateswarlu,

Superintendending Engineer (O)"

As seen from the said proceedings it is clear that writ petitioner was transferred only as Sub-Engineer against the existing vacant post of AAE and that too at the request of the writ petitioner himself. The said orders disclose that the writ petitioner was not even allowed to claim transfer travelling allowance or even joining time as the transfer was at the request of the respondent-writ petitioner. So it is obvious that it is only at the request of the writ petitioner he was transferred as Sub-Engineer duly counting against the existing vacant post of AAE. That appears to be the reason why the respondent-writ petitioner did not claim the scale of AAE till 26.07.2004 on which date he filed an application claiming minimum time scale of AAE for the period for which he worked as Sub-Engineer against the post of AAE. Merely because he discharged the duties of AAE for the period from 20.09.1996 to 20.01.2002, it cannot

be said that he is entitled for the minimum scale attached to the post of AAE, especially when the employee himself voluntarily and at his own request was posted as Sub-Engineer against the post of AAE. Admittedly, the respondent-writ petitioner did not get promotion during the period from 20.09.1996 to 22.01.2002 and he got promotion only on 22.01.2002. As long as the substantive post is the Sub-Engineer and when he was transferred as Sub-Engineer duly counting against the post of AAE at his request, he cannot claim the salary attached to the post of AAE.

The respondent's claim is based purely on the unreported judgment of this Court in W.P.No.2984 of 1996, dated 28.02.1997. The facts of the said writ petition are that the writ was filed against the Rural Electric Supply Cooperative Societies Limited (RESCO) by three casual labourers appointed on 29.01.1991 and later as linemen on 20.06.1992 who were later appointed as Load Surveyors on 24.03.1994 which appointment was later cancelled on 24.01.1995. The cancellation was questioned in the W.P.No.2543 of 1995 and interim stay was obtained. In the meanwhile those persons were directed to be incharge of the posts of AAEs. Thereafter those persons filed W.P.NO.2984 of 1996 requesting this Court to give a direction to promote them to those posts on completion of five years from the date of their joining the organization as casual labourers. Along with that writ petition they filed an interim application seeking payment of minimum time scale applicable to the post of AAE as they were discharging the duties attached to that post. At the time of hearing of the writ petition in that writ the petitioners therein confined their relief only to the interim application and did not press for promotions. The learned single Judge Sri T.N.C. Rangarajan held that as long as it is not disputed that the petitioners are required to discharge the duties of the post of Additional Assistant Engineer, they are entitled to the salary attributable to that post. The facts of the said case are not similar to the facts of this case because in the cited case they were directed by the department to discharge the duties of AAE, whereas in the instant case, the respondent-writ petitioner was

transferred as Sub-Engineer duly counting against the vacant post of AAE only at his request. Ofcourse, the respondent-writ petitioner relied on the ratio of the said decision wherein learned Judge Sri Justice T.N.C. Rangarajan held that as long as the petitioners are required to discharge the duties of AAE, they are entitled to salary attributable to the post. But, we are unable to agree with the said view expressed by the learned single Judge. As long as the employee is not promoted to the higher cadre post, he is not entitled to claim the minimum scale attached to that post though he is asked to discharge the duties attached to that higher cadre post temporarily for the sake of administrative convenience. In case, any employee is asked to discharge such duties in addition to the duties of his substantive post, he may claim additional amount in the form of 'full additional charge allowance'. When the officer is not holding two posts, he cannot claim even additional charge allowance also. Here, in the instant case, the respondent-writ petitioner was posted as Sub-Engineer against the vacant post of AAE at his request. Obviously as there was no post of Sub-Engineer at that particular place where the respondent-writ petitioner wanted to be transferred, he was transferred as Sub-Engineer to the vacant post of AAE to accommodate the writ petitioner. Therefore, we are of the considered view that the leaned single Judge herein grossly erred in allowing the writ petition and hence it is not sustainable in law and is liable to be set aside. Thus, this point is held accordingly.

POINT NO.2:

IN THE RESULT, the Writ Appeal is allowed setting aside the impugned order passed by the learned single Judge in W.P.No.4622 of 2005, dated 14.03.2005. There shall be no order as to costs.

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B.PRAKASH RAO, J

P.LAKSHMANA REDDY, J

Dated:25-11-2005.

Note:

L.R. copy to be marked.

B/o

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